

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

TOTAL OUTDOOR CORP.,

Petitioner,

v.

CITY OF SEATTLE,

Respondent.

**CASE No. 13-3-0008**

**ORDER OF DISMISSAL**

On September 12, 2013, Total Outdoor Corp. (Petitioner) filed a Petition for Review (PFR) challenging action of the City of Seattle (City) in relation to proposed sign code amendments. The Petition was assigned Case No. 13-3-0008, with Margaret Pageler as Presiding Officer and Cheryl Pflug and William Roehl assigned to the panel to hear the matter.

The action for which review is sought, as described in the PFR, is:

[T]he City Hearing Examiner's Order on Motion to Dismiss, Hearing Examiner Files No. W-13-003 and W-13-003 ("Order"), dated July 15, 2013... The Order dismissed for lack of standing Petitioner's appeal of a Determination of Nonsignificance ("DNS") issued by the City's Department of Planning and Development for **proposed amendments** to the Seattle Municipal Code related to standards for on-premises wall signs.<sup>1</sup> (emphasis added)

There is no indication in the PFR or attachments of any final action taken by the City adopting amendments to the Seattle Municipal Code standards for wall signs. Under these circumstances, the Board must consider whether Petitioner Total Outdoor Corp. has properly invoked the Board's jurisdiction.<sup>2</sup>

<sup>1</sup> PFR, at 1-2.

<sup>2</sup> See *William H. Wright v. San Juan County*, Case No. 13-2-0019, Order of Dismissal (July 5, 2013).

1 The Growth Management Hearings Board is a creature of the Legislature without  
2 inherent or common-law powers and, as such, may exercise only those powers conferred by  
3 statute, either expressly or by necessary implication.<sup>3</sup> A party cannot confer jurisdiction; all  
4 that a party does is invoke it. Statutory requirements must be met before jurisdiction is  
5 properly invoked.<sup>4</sup> WAC 242-03-530(1) tasks the Presiding Officer with:

6 Inspect[ing] the petition for review to determine whether, on its face,  
7 compliance with the jurisdictional and standing requirements of the act is  
8 shown.

9 The PFR states two issues:  
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- 11 1. Did the City fail to comply with the public participation requirements of the Growth  
12 Management Act ("GMA") including RCW 36.70A.020(11), RCW 36.70A.140, the  
13 implementing provisions of the Seattle Comprehensive Plan, including its Vision  
14 to "involve citizens in planning and decision making," and the implementing  
15 provisions of SMC 23.76.062.D, when it improperly failed to consider the merits of  
16 Petitioner's appeal of the DNS?
- 17 2. Did the City violate the State Environmental Policy Act ("SEPA"), including RCW  
18 43.21C.075, including SMC 25.05.680 and SMC 23.76.022 when it issued the  
19 Order dismissing Petitioner's administrative SEPA appeal for lack of standing?

20 Issue 1, GMA Compliance. To invoke the Board's jurisdiction to review compliance  
21 with the GMA, a party with standing must comply with the statute's procedural requirements:

- 22 a) File a petition for review that includes a detailed statement of issues  
23 presented for resolution by the Board;<sup>5</sup>
- 24 b) File the petition for review within 60 days after notice of publication by the  
25 City of the **adoption** of a comprehensive plan, development regulation, or  
26 permanent amendment thereto;<sup>6</sup> and,
- 27 c) Allege noncompliance with the requirements of the GMA.<sup>7</sup>  
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31 <sup>3</sup> *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998).

32 <sup>4</sup> *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319, 76 P.3d 1183 (2003).

<sup>5</sup> RCW 36.70A.290(1).

<sup>6</sup> RCW 36.70A.290(2).

<sup>7</sup> RCW 36.70A.280(1)(a).

1 Neither the PFR nor its attachments demonstrate adoption of sign code amendments  
2 by the City, and thus the challenge does not fall within the statutory parameters for Board  
3 review of compliance with the GMA.

4 Issue 2, SEPA Compliance. Similarly, SEPA in chapter 43.21C RCW does not  
5 create a cause of action separate and apart from an underlying governmental action. Any  
6 challenge before the Growth Board alleging SEPA violations related to city or county  
7 amendment of development regulations must await final adoption of those amendments.  
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9 RCW 43.21C.075 is clear: SEPA does not establish a separate cause of action apart  
10 from a specific governmental action.<sup>8</sup>

11 (1) Because a major purpose of this chapter is to combine environmental  
12 considerations with public decisions, any appeal brought under this chapter  
13 shall be linked to a specific governmental action. The State Environmental  
14 Policy Act provides a basis for challenging whether governmental action is  
15 in compliance with the substantive and procedural provisions of this chapter.  
16 The State Environmental Policy Act is not intended to create a cause of  
action unrelated to a specific governmental action.

17 (2) Unless otherwise provided by this section:

18 (a) Appeals under this chapter shall be of the governmental action together  
19 with its accompanying environmental determinations.

20 (b) Appeals of environmental determinations made (or lacking) under this  
21 chapter shall be commenced within the time required to appeal the  
22 governmental action which is subject to environmental review. (emphasis  
added)

23 The GMA is clear that the same rule applies to allegations of SEPA violations brought  
24 to the Board for review:

25 The growth management hearings board shall hear and determine only  
26 those petitions alleging ... [noncompliance with] chapter 43.21C RCW as it  
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29 <sup>8</sup> *Boss v. Dep't Of Transp.*, 113 Wn. App. 543, 549, 54 P.3d 207 (2002): "The general rule in both  
30 administrative and judicial SEPA appeals is that they must combine review of SEPA issues with the related  
31 government action." *State ex rel. Friend & Rikalo Contractor v. Grays Harbor County*, 122 Wn.2d 244, 249,  
32 857 P.2d 1039 (1993). The purposes of this linkage requirement are to "preclude judicial review of SEPA  
compliance before an agency has taken final action on a proposal, foreclose multiple lawsuits challenging a  
single agency action and deny the existence of 'orphan' SEPA claims unrelated to any government action."  
*Grays Harbor County*, 122 Wn.2d at 251 (citing Richard L. Settle, *The Washington State Environmental Policy  
Act*, § 20 at 244-45 (1993)).

1 relates to plans, development regulations, or amendments, **adopted** under  
2 RCW 36.70A.040..."<sup>9</sup>

3 There was no ordinance or other documentation attached to the PFR evidencing final  
4 governmental action on the City's sign code amendments.<sup>10</sup> The SEPA claim is not ripe.

5 The Board is authorized by statute to dismiss a petition for review if the petition is  
6 frivolous.<sup>11</sup> The Board may dismiss a petition *sua sponte* when lack of jurisdiction is  
7 apparent.<sup>12</sup> The Board must dismiss a petition when the Board determines jurisdiction was  
8 not properly invoked, since the Board has no power to adjudicate that particular case.<sup>13</sup> The  
9 Presiding Officer has examined the petition and determined that on its face the PFR does  
10 not show compliance with the jurisdictional requirements of the GMA and SEPA.<sup>14</sup>

11 Consequently, **the Board finds and concludes** as follows: (1) there was no final,  
12 appealable decision made by the City of Seattle, (2) any challenge alleging violations of  
13 Chapter 43.21C RCW in regards to development regulations amendments can only be  
14 raised in conjunction with a final adoption by the City, (3) the PFR on its face does not meet  
15 the jurisdictional requirements of the GMA or SEPA, and (4) Petitioner failed to invoke the  
16 Board's jurisdiction to consider GMA compliance and/or a SEPA violation in connection with  
17 the proposed sign code amendments. RCW 36.70A.280(1)(a);<sup>15</sup> RCW 43.21C.075.

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22 <sup>9</sup> RCW 36.70A.280(1) (emphasis added).

23 <sup>10</sup> *Tooley v. Governor Gregoire and City of Seattle*, Case No. 11-3-0008 (*Tooley II*), Order on Dispositive  
24 Motions (November 8, 2011), at 8-9: "In short, the Board lacks jurisdiction to determine SEPA compliance  
25 except as it is tied directly to "adoption" or "amendment" of a GMA or SMA plan or regulation.... In the present  
26 case, the Petitioner has not identified any final action by the City or State that constitutes adoption or  
27 amendment of a GMA plan or development regulation."

28 <sup>11</sup> RCW 36.70A.290(3).

29 <sup>12</sup> *Tooley v. Governor Gregoire and City of Seattle*, Case No. 11-3-0006, Order of Dismissal (April 1, 2011), at  
30 2, and cases cited therein.

31 <sup>13</sup> See *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999) [If a court lacks jurisdiction over a  
32 proceeding, it "may do nothing other than enter an order of dismissal"]. See also *Griffith v. City of Bellevue*,  
130 Wn.2d 189, 196, 922 P.2d 83 (1996).

<sup>14</sup> WAC 242-03-530(1).

<sup>15</sup> The growth management hearings board shall hear and determine only those petitions alleging either:  
(a) That, except as provided otherwise by this subsection, a . . . county . . . planning under this chapter is not  
in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of  
shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans,  
development regulations, or amendments, **adopted** under RCW 36.70A.040 or chapter 90.58 RCW. . .  
(emphasis added)

1 **ORDER**

2 Based on the foregoing, the Petition for Review filed by Total Outdoor Corp., Case  
3 No. 13-3-0008, is hereby dismissed.

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5 DATED this 23<sup>rd</sup> day of September, 2013.

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Margaret Pageler, Presiding Officer

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Cheryl Pflug, Board Member

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William Roehl, Board Member

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16 **Note: This is a final decision and order of the Growth Management Hearings Board**  
17 **issued pursuant to RCW 36.70A.300.<sup>16</sup>**

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30 <sup>16</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all  
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840.  
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days  
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.  
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth  
Management Hearings Board is not authorized to provide legal advice.